appears very clearly in the terms of the Act, or arises by necessary and distinct implication" — *Maxwell* on Interpretation of Statutes, 12th Edition page 215; and

(ii) that "if there is any ambiguity in the words which set out the elements of an act or omission declared to be an offence, so that it is doubtful whether the act or omission in question in the case falls within the statutory words, the ambiguity will be resolved in favour of the person charged" (*Ibid* page 240).

To give to the section the meaning contended for by the defendants would violate both principles.

The conduct penalised by the section is the entering into of a guarantee. Section 133A of the Companies Amendment Act came into operation on November 15, 1974 and affects all guarantees made on or after that date. The present Guarantee was entered into on July 31, 1974 although the advances were made after November 15, 1974. The section said nothing at all which could or might invalidate any guarantee already entered into at that date nor its performance, enforceability or discharge. The Guarantee made on July 31, 1974 is expressed to be "a continuing guarantee"; it is not a succession of separate guarantees.

There is no reason or justification for giving the section retrospective effect. To do so would have invalidated overnight a large number of guarantees held by banks and others, in good faith as security, in Singapore and would involve a large number of perfectly respectable guarantors in the commission of criminal offences, a result which it is inconceivable the legislature could have intended without express terms.

Lastly, has a demand been made? There can be no doubt that the answer to this question is in the affirmative, and the defendants do not appear seriously to dispute this. The various demands made are referred to in paragraphs 4 and 5 of the statement of claim. Any one of these is sufficient for the plaintiffs to succeed.

From the evidence, I find that the Directors of the defendant company were fully aware that Wong Kee Loh had executed the Guarantee on behalf of the defendants and it was done with their consent and acquiescence. In the circumstances there will be judgment for the plaintiffs for the amount claimed with interest and costs.

Claim allowed.

Solicitors: *Chung & Co.; Y.M. Jumabhoy & Co.*

MARY-ANN ARRICHIELLO v. TANGLIN STUDIO PTE. LTD.

[O.C.J. (Chua J.) October 14, 1980]
[Singapore — Suit No. 3205 of 1979]

Contract — Specific performance — Payment of booking fee — Cheque deposited with solicitors — Whether there was an agreement to enforce.

Housing developers — Deposit of booking fee — Claim for specific performance or damages — Whether there was an agreement — Housing Developers (Control & Licensing) Act (Cap. 250), ss. 4 & 21 — Housing Developers Rules 1976, r. 11.

The plaintiff in this case sought for specific performance by the defendants, housing developers, of an agreement between them for the sale by the defendants of a maisonette unit at Leonie Hill. In the alternative the plaintiff claimed damages for breach of the said agreement. The facts revealed that the plaintiff had already paid a booking fee of $2,000 payable to the defendants' solicitors through one Mr. Zee. The price of the maisonette was confirmed at $130,000 in a letter of January 13, 1979 by the defendants addressed to the plaintiff. The plaintiff wrote a letter of September 11, 1979 regarding the purchase of the said maisonette. On October 1, 1979 she received a letter from the defendants stating that they had decided not to sell the maisonette and they accordingly returned her said cheque. On October 26, 1979 the plaintiff commenced proceedings.

Held, allowing the plaintiff's claim: (1) the Housing Developers (Control & Licensing) Act (Cap. 250) merely prescribes a method of performance by the housing developer for the protection of a class of persons — the purchasers — as far as possible from the risk of exploitation. The said Act does not in any way prohibit the making of a contract for the sale and purchase of flats;

(2) in this case the contract between the plaintiff and the defendants was not illegal and was enforceable.

Cases referred to:-

(1) *Auerbach* v. *Nelson* [1919] 2 Ch. 383.

(2) *Chai Sau Yin* v. *Liew Kwee Sam* [1962] A.C. 304; [1962] M.L.J. 152.

(3) *Yeo Long Seng* v. *Lucky Park (Pte.) Ltd.* [1971] 1 M.L.J. 20.

(4) *Daiman Development Sdn. Bhd.* v. *Matthew Lui Chin Teck & Anor.* [1978] 2 M.L.J. 239.

CIVIL SUIT.

Lee Han Yang for the plaintiff.

G. Murugaiyan for the defendants.

Cur. Adv. Vult.

Chua J.: The plaintiff seeks specific performance by the defendants, who are housing developers, of an agreement between them for the sale by the defendants of a maisonette unit in a seventeen storey block of flats built by the defendants at Leonie Hill. The plaintiff says that the agreement is evidenced by a letter dated January 13, 1979, from the defendants to her. Further and in the alternative, the plaintiff claims damages for breach of the said agreement and/or such other relief as the court thinks fit.

The plaintiff, who lives in Leonie Hill opposite the defendants' block of flats, testified that in November, 1978, she made inquiries at the Leonie Hill construction site of the defendants about apartments being built there for sale. She was directed to see Mr. Barry Zee at the worksite office. Following her interview with Zee the defendants sent her some floor plans and a price list on November 22, 1978 (AB1 — AB4). Later she telephoned Zee and told him that she was interested in purchasing the maisonette marked as A1/3 at its list price of $129,600 and Zee told her that she had to pay a booking fee of $2,000. She said that she was going away and Zee told her that he would hold the maisonette until her return. In early January, 1979, she called Zee to make an appointment to pay the deposit. On or about January 3, 1979, she went to see Zee. He told her to make out a cheque of $2,000 payable to the defendants' solicitors. He also told her that the price of the Unit had been increased as they were going to put on better tiling but he could give the unit to her for $135,000.

After some negotiations on the price Zee finally agreed to let her have the maisonette for $130,000 and she agreed to that price. She then made out a cheque for $2,000 (AB10) and handed it to Zee. Sometime later she received a letter from the defendants dated January 13, 1979, in these terms (AB5):

"Dear Madam,

Tanglin Studio Apartments

This is to confirm that you have paid a deposit of $2,000 vide your HSBC cheque No. 506975 being booking of one unit of maisonette unit No. A1/3 for the price of $130,000."

After that she called Zee several times asking him when they were going to collect further payments and she was told that they had no permission to collect further payments. In March, 1979, she received the following letter from the defendants dated March 28 (AB6):

"Dear Prospective Purchaser,

PROPOSED 17-STOREY STUDIO APARTMENTS AT LEONIE HILL/GRANGE ROAD, SINGAPORE.

We are pleased to inform you that the above building R.C. structural work is now completed up to 12th floor. By end of this month, we shall expect to reach to 14th floor and the R.C structural work is expected to complete one month ahead of schedule provided the weather is good.

We have successfully obtained our 'Developer's Licence for Sale' and upon clearances from all the Relevant Authorities, we shall send you the option of sale accordingly.

We have the pleasure to enclose herewith some details concerning the inflation cost due to labour as well as materials. You may also notice from these facts and figures that unfortunately due to oil crisis, the prices of basic materials have increased beyond our control. The overall prices have increased from 10% to 15%. Whilst these price increases are purely due to inflationary cost and are through no fault of our own especially labour cost has gone up more than 20% since the work commenced, we are prepared to bear the greater part of the increase ourselves, so cushioning the effect it would have had on the final buying price to our customers. However, you will appreciate that our company is unable to cover the entire extra cost alone. Also we have improved the finishes as per original quote. We hope all of you will sympathise with us on this inflationary cost and also please consider the fact that we have to provide high quality materials, finishes and workmanship to this prestigious building which you are one of the Proud Owners.

At the moment we are fixing our 'Topping Day' on October 6, 1979 — Saturday (this date is to be confirmed) whereupon all our purchasers are cordially invited to attend a small garden party in the grounds of the above construction worksite. We are also pleased to inform you that our expected completion date will be March 31, 1980. Please do not hesitate to contact us if you have any enquiry.

We look forward to your personal attendance on October 6, 1979.

With best wishes,"

On September 11, 1979, she wrote the following letter to the defendants (AB8):

"*Tanglin Studio Apartments*

Maisonette Unit No. A1/3

I refer to my purchase of the above unit.

You have informed me on the telephone several times that you do not yet have the authority from the Government to collect further payments. Please let me know whether you now have that authority and the amount now payable to you."

Then she received this letter dated October 1, 1979; from the defendants (AB9):

"*RE: TANGLIN STUDIO APARTMENTS AT LEONIE HILL/GRANGE ROAD*

Having heard that we were building the above apartments, you had without our giving you any option, left a cheque with our Solicitors, Messrs. Boswell, Hsieh & Lim for $2,000 sometime in January 1979.

Since then the Board of Directors have decided not to sell any of the apartment but to keep them as the company's investment. Under the circumstances, we return herewith your cheque.

We appreciate your keen interest in wanting to purchase one of the studios developed by the company. In case we were to develop other blocks in the future, we will keep you informed, when you can, if you are still interested, come forward to purchase.

In the meanwhile, we would also like to express our regret for any inconvenience and disappointment caused to you."

On October 26, 1979, the plaintiff commenced the present proceedings.

The defendants deny that there is an agreement or alternatively that if there is an agreement, the agreement is illegal and not enforceable.

The first issue is, is there an agreement?

The defendants' case that there is no agreement rests on two arguments. The first is that the defendants did not at the material time intend to enter into a binding contract for the sale of the property. Mr. Chwee Meng Chong, the Chairman and Executive Director of the defendant Company in his evidence said:

"We did not advertise in the newspapers offering the flats for sale. But during the construction many people telephoned or came to the office personally to enquire about the sale of these studio flats. I have told everyone, including my office staff, that I have not made up my mind whether to sell the whole block to a company or sell the flats individually at a later date after completion. In January, 1979, I had not decided either way.

People have approached the company to purchase the flats and they were told we were prepared to enter into a non-contractual reservation. That means they could register their names in the waiting list and if I decide to offer the flats for sale they would be given priority. We did not ask these people to leave a deposit for the reservation. They came and asked who were our lawyers and they were willing to make out a cheque in favour of our solicitors and leave it at our office. We did not issue any receipt to any of the intending purchasers. Boswell, Hsieh & Lim our solicitors did not issue any receipt for the deposit to anybody. To date we have not sold any unit."

The defendants' explanation as to how the letter AB5 of January 13, 1979, came to be sent to the plaintiff is this. Miss Evelyn Chai Poh Chun, the bookkeeper of the defendants, in her evidence said that one day early January, 1979, Mr. Barry Zee brought the plaintiff to the office at 23 St. Thomas Walk. Zee told her that the plaintiff intended to buy a flat. She then told the plaintiff very clearly that the Company had not been given the authority to sell the flats; that the Company had not decided whether to sell the block of flats or sell the flats individually. She told the plaintiff that the plaintiff could leave a cheque if she wished but that did not mean that she would get the flat. She told the plaintiff that the cheque was to be for $2,000 made payable to the Company's solicitors, Boswell, Hsieh & Lim and that the cheque was to be left in the Company's office as tentative booking. The plaintiff made out the cheque and left it with her. No receipt was issued that day. She told the plaintiff that the Company could not sign any agreement with her, but if the Company decide to sell the flats an advertisement would be inserted in the newspapers and an option

would be sent to her. Zee was present throughout the conversation with the plaintiff. A few weeks later the plaintiff telephoned her a few times asking for a receipt for the $2,000. She told the plaintiff that the Company could not issue any receipt. The plaintiff said it did not matter, that the Company could give her a letter and that would do. She consulted Zee who told her that the price agreed between Zee and the plaintiff was $130,000. She then prepared the letter AB5 signed it and sent it to the plaintiff. After she had sent AB5 the plaintiff telephoned her and asked when would she (the plaintiff) be required to pay the balance and also the procedure. She told the plaintiff that the Company had not made any decision.

Chwee Meng Chong's evidence is not supported by documentary evidence available. He admitted that in none of the documents which the defendants sent to the plaintiff were the words "non — contractual" used and neither were the words "reservation" or "tentative". In AB3 and AB4 the words "sold" were clearly written against certain units. In the letter of invitation to the plaintiff to attend the Company's "Topping Day" garden party (AB6) defendants referred to her as "one of the Proud Owners" and said "all our purchasers are cordially invited".

As to the evidence of Evelyn Chai, the defendants' bookkeeper, it is clear that she was keen to help the defendants. Her evidence is suspect. Even she admitted that she was not present at the negotiations between Zee and the plaintiff.

Zee was a director of the defendant Company at the material time; he was the person who negotiated with the plaintiff; he was, according to Evelyn Chai, present when Evelyn Chai explained the position to the plaintiff. He is the only person who can give evidence to refute the plaintiff's evidence. But he was not asked by the defendants to give evidence when his evidence could have been produced. An adverse inference has to be drawn against the defendants.

I accept the plaintiff's evidence. She went to see the defendants to purchase a maisonette; they negotiated the price with her; they asked her to make a deposit and they took her cheque. They never told her of their so-called legal impediment. Ten days later they sent her the letter AB5. No where in the documents was it stated that the defendants were under a legal impediment to sell. It was only later when the plaintiff telephoned the defendants was she told that they did not have authority to collect further sums. There was no reason why she should connect this with the so-called legal impediment to sell. In March, 1979, in their letter of March 28 (AB6) the plaintiff was told that the defendants had "successfully obtained our "Developer's Licence for Sale" and that "upon clearances from all the Relevant Authorities, we shall send you the option of sale accordingly." The plaintiff was prepared, willing and able to complete the purchase and that was why she made inquiries and later wrote on September 11, 1979, (AB8) to the defendants enquiring why they were not demanding any further sums from her. If the defendants have acted in a manner not sanctioned by their Licence it is quite clear that the plaintiff can never be said to have aided and abetted the defendants.

The defendants' second argument in support of their case that there is no agreement is that an agreement for sale of a flat in a condominium project must be in Form B in the Schedule to The Housing Developers Rules, 1976, which contains many conditions to be agreed to between the parties and that AB5 cannot constitute an agreement for sale.

This submission has no merit. "The simplest possible contract is where only the parties property and price are specified, for example, where *A* agrees to buy Blackacre from *B* for £1000. This is the most 'open' contract of all and though it is unbusinesslike it is perfectly effective in law." (*Megarry*, The Law of Real Property, 4th Ed. at page 573). The learned authors on *Emmet* on Title (17th Ed.) comment as follows on "open contract" (at page 76):—

> "Open contracts. — Conditions of sale are so aften made that it is sometimes forgotten that a code of rules is implied by law in an 'open' contract, that is, where there are no conditions. An open contract is formed if agreement is reached as to the parties, the property and the price. In considering what conditions should be inserted in a contract, and in construing conditions, it is essential to start by ascertaining the conditions which will be implied if no provision to the contrary is contained in the contract."

In *Auerbach* v. *Nelson*[1] the receipt for the deposit which evidenced the contract between the parties was as follows:—

> "November 21, 1918. Received of Mr. Auerbach, 197 High Street, Shoreditch, £10 on account of house being sold for £500 from Mr. M. Nelson, Nelson Lodge, 143 Victoria Park Road. Possession to be taken in 6 weeks after date. (Signed) Morris Nelson. November 21, 1918."

The defendant contended that the memorandum was insufficient within the Statute of Frauds for two reasons — namely, first the purchaser was not sufficiently indicated; secondly the property was not sufficiently described. It was held that the receipt was a sufficient memorandum of the verbal contract, the date, parties and price being apparent on the face of it and therefore parol evidence could be given to show what that description "house being sold" referred. In our case defence under section 4 of the Statute of Frauds was not pleaded.

There is clear evidence before me that there is an agreement between the plaintiff and the defendants for the sale and purchase of the said property.

The defendants' second defence is that if there is an agreement then the agreement is not enforceable because of what they have called a "legal impediment".

In support of this argument counsel for the defendants have drawn my attention to certain provisions of the Housing Developers (Control & Licensing) Act (Cap. 250), (the Act) and the Housing Developers Rules, 1976, (the Rules).

Section 4 of the Act provides that a housing developer must be in possession of a licence and section 21 enables the Minister to make rules which he may deem necessary for the carrying out of the provisions of the Act.

Rule 11 requires the use of a form of agreement for sale as set out in Form A or Form B in the Schedule.

A licence dated December, 1978, (AB14) was issued to the defendants. One of the conditions was that no housing unit shall be sold or in any way disposed of without the prior approval of the Controller in writing (this condition was cancelled on March 7, 1979). The licence also requires a specimen copy of the agreement for sale shall be sent to the Controller and a copy of the executed agreement shall be supplied to the purchaser. Another condition is that "except as provided in the prescribed agreement, no deposits, fees, charges or payments by whatsoever name called, shall be collected from any purchaser without the prior approval of the Controller." Another condition is, "For the purpose of booking by intended purchasers the Company shall use the "Notice to Purchaser" and the "Option to Purchase" forms prescribed by the Controller (these forms were not inserted in the Schedule until January 11, 1980.)

The defendants contend that in view of the provisions of the Act and the conditions in their licence they were not legally in a position to enter into any agreement for the sale and purchase of the maisonette and that the said letter AB5, if it is an agreement, is null and void and unenforceable.

The defendants rely on the case of *Chai Sau Yin* v. *Liew Kwee Sam.*[2] This was an appeal from the Supreme Court of the Federation of Malaya to the Privy Council. The respondent, a rubber grower, sold a quantity of smoked sheet rubber to a partnership of which the appellant was a member. Only one member of the partnership — not the appellant — held the requisite licence to purchase rubber, and none of the other partners' names were inserted in the licence issued to the holder. The respondent knew that that member had a licence and had partners but took no steps to find out whether the other partners' names were included in the licence. On a claim by the respondent for the balance of the price of the rubber (two of the partners, including the licence holder, having submitted to judgment and a third being out of the jurisdiction) the appellant, who had never held a licence, contended that the licence was personal to the partner to whom it had been issued and did not cover the partnership and that any purchase by him (the appellant) was prohibited by section 5 of the Rubber Supervision Enactment, 1937, and therefore illegal and unenforceable. By section 5 "(i) . . . no person shall purchase . . . rubber . . . unless he shall have been duly licensed in that behalf under this Enactment." It was held that the evidence was consistent only with a purchase by the partnership; that the licence was personal and not assignable (section 16) and the names of the partners not having been included in the licence as required by the enactment the purchase was prohibited by law, a prohibition made in the public interest, which would be enforced notwithstanding that the appellant had to rely on his own illegality, and, accordingly, the respondent could not recover.

The buying and selling of houses or flats is not a prohibited activity under the law. Anyone (except foreigners in certain cases) can buy and sell houses and flats in Singapore. The Act seeks to control housing development not the sale and purchase of properties. This is very different from the Rubber Supervision Enactment, 1937, which aims at the purchase of rubber itself. Section 21 of the Act is merely seeking to control, amongst other things, the mode of performance of the contract of sale by housing developers and it seeks to do this through a licence granted to the developer. It does not in any way prohibit the formation of an agreement. Certain procedures are provided for certain activities, for example, in advertising, in raising a loan on the property and in agreements for sale. The so-called legal impediment exists on the face of the licence only. Each licence could have its own limitations. Whether or not a developer is under an impediment is personal only to the developer.

The penalty for the breach of any condition of a housing developer's licence is provided for in section 4(8) of the Act. The Controller may revoke the licence for certain reasons (section 7). These sections provide fully and comprehensively the consequences of the breach by the housing developer. Nowhere does the Act nullify or avoid any contract. The Rules also provide for the consequences in the event of a breach (Rule 20). Rule 20(2) even provides punishment for an aider and abettor, but again there are no provisions nullifying the contract.

The effect of non-compliance with statutory requirement is set out in *Chitty* on Contracts (General Principles) 24th Edition at paragraph 223:

> "Non-compliance with such statutory requirements may produce various effects. It may make the contract void, or unenforceable, or unenforceable by one party or enforceable only on an order of the court. It may simply deprive the transaction of certain effects which it would have had, if the formal requirement had been observed, without generally impairing its validity or enforceability: this would be the case, for example, if a lease for more than three years were not made under seal; if an assignment of a chose in action were made orally; or if the sort of promise which is normally contained in a bill of exchange or promissory note were made orally. Failure to comply with formal requirements may also be a criminal offence, and in some cases this is the sole consequence of failure which is actually specified in the relevant statute. The civil consequences of failure to comply with a statutory requirement of form in such a case would presumably depend on the court's view of the objects which the legislature sought to achieve in imposing the requirement. If the requirement was imposed to protect one of the parties to a contract, that party would probably be able to enforce the contract notwithstanding the formal defect; whether the other party could enforce it would depend on principles discussed elsewhere in this book."

And at paragraph 1022:

> "Statutes which prohibit certain contracts often impliedly recognise, for example by punishing only one of the parties, that the parties are not equally at fault, and therefore on their true construction only one of the parties to the contract is prevented from suing upon it. Accordingly 'when the policy of the Act in question is to protect the general public or a class of persons by requiring that a contract shall be accompanied by certain formalities or conditions, the contract and its performance without those formalities or conditions is illegal, and cannot be sued upon by the person liable to the penalties. But the other party to the contract is not deprived of his civil remedies because of the criminal default of the guilty party."

The Act is merely prescribing a method of performance by the housing developer for the protection of a class of persons — to protect purchasers as far as possible from the risk of exploitation. The Act does not in any way prohibit the making of a contract for sale and purchase of flats. The licence that the Act requires is a licence to develop.

In *Yeo Long Seng* v. *Lucky Park (Pte.) Ltd.*[3] Winslow J. said (at page 23):

"It may well be said that conveyancing practice recognises a formal contract of sale concluded in the usual form and in accordance with the usual conditions of sale as being part of the normal machinery or procedure preceding a conveyance of land. The agreement in the schedule (to the Rules) now takes the place of the formal contract required in the case of sales by developers. This, however, is far from saying that there can never be any contract at common law if all the agreed terms between the parties are incorporated in correspondence or in some other way sufficient to constitute a sufficient note or memorandum evidencing agreement leaving no other terms to be yet agreed."

In the Malaysian Federal Court case of *Daiman Development Sdn. Bhd.* v. *Matthew Lui Chin Teck & Anor.*[4] the respondent was desirous of buying a house. He went to see the developers (the appellants), chose a house, paid a booking fee of $700 and signed a booking pro forma. According to the booking pro forma the parties agreed the purchase price of the house at $26,000. The respondent also agreed that on receiving notice by the respondents, he would sign the agreement for sale. Subsequently the appellants informed the respondent that the price of the house was increased to $35,100 because of "amendments to the building plans and increase of material and construction costs." The respondent did not agree to the increased price. The appellants informed the respondent that unless he agreed to pay the deposit based on the increased price, they would cancel the booking and refund the booking fee. The respondent thereupon applied to the court and the High Court gave judgment in his favour and ordered the developers on payment of the balance of the purchase price to transfer the property to the respondent. The appellants appealed. Suffian L.P. (delivering the judgment of the court) said at (page 243):

"The issue was whether the booking pro forma was a mere agreement to agree, as the defendants contended, or a firm contract of sale of the property, as the plaintiff contended. In our judgment, the pro forma was a firm contract. It identified the parties, it specified the property to be bought and its agreed price. True, the plaintiff was required to sign an agreement of sale to be prepared by the developers' solicitors and subject to the terms and conditions therein; but in fact the developers never showed the plaintiff the draft of any agreement. All the developers did was to announce unilaterally an increase in price for reasons which could not, in our view, affect the price to be paid by the plaintiff. The developers are bound by the Housing Developers (Control and Licensing) Rules, 1970, published as P.U. (A) 268 of 1970, and only details may be inserted into the further agreement. These details were never put to the plaintiff and he never had an opportunity to consider them; it was only after the plaintiff had rejected the draft of the further agreement that the developers might — we say might deliberately — call off the sale."

The appeal was dismissed.

I conclude, therefore, that the contract between the plaintiff and the defendants is not illegal and is enforceable.

The defendants have led no evidence as to why the court should not order specific performance. In my view specific performance is the proper remedy in this case and I so order.

Application allowed.

Solicitors: *Lee, Woo & Partners; G. Murugaiyan.*

FISCAL CONSULTANTS PTE. LTD. v. ASIA COMMERCIAL FINANCE LTD.

[O.C.J. (Lai Kew Chai J.) July 14, 1981]

[Singapore — Originating Summons No. 135 of 1981]

Contract — Loan agreement — Mortgage of property in favour of lender — Condition of mortgage — Redemption of mortgage only after expiry of one year and by giving 3 months' notice — Plaintiffs sought to redeem 3 months after loan — Interest imposed by lender for full period of one year and period of 3 months' notice of redemption — Whether clog on equity of redemption.

Contract — Waiver — Variation by express agreement or implied from conduct of parties.

The plaintiffs in this case entered into an agreement for sale and purchase dated September 12, 1978 with Hotel Merlin Singapore Ltd. to purchase two office units at Merlin Plaza (hereinafter referred as the "mortgaged properties"). On September 10, 1980 the defendants lent to the plaintiffs a sum of $200,000. The plaintiffs agreed to pay interest at the rate of 12½% per annum. The plaintiffs also agreed to pay the principal sum and interest by one hundred and eighty monthly instalments of $2,520 each. The first instalment was repayable on October 10, 1980. By way of security, the plaintiffs created in favour of the defendants an equitable mortgage over the mortgaged properties. A deed of assignment and a mortgage in escrow was executed by the plaintiffs in favour of the defendants. By Clause 3 of the mortgage, the plaintiffs agreed to perform and observe all the covenants and conditions set forth in the Memorandum filed by the defendants in the Registry of Titles. Sub-clause 2(j) of the Memorandum provided that "the mortgagor (the plaintiffs) shall only be entitled to redeem this security upon the expiry of one year from the date of these presents by giving to the mortgagee (the defendants) three months' notice of his intention to do so and upon payment of all moneys due to the company (the defendants) hereunder at the expiry of the notice including interest up to that date."

On December 26, 1980, the plaintiffs through their solicitors purportedly gave notice to the defendants to redeem the mortgaged properties and asked for the redemption statement. As a little over 3 months after the loan had elapsed, this notice was obviously in breach of sub-clause 2(j) of the Memorandum. On February 9, 1981 the defendants sent to the plaintiffs the redemption statement and required the plaintiffs to pay the sum of $231,645.19. This meant that the defendants were asking for interest for the full period of one year and the period of 3 months' notice of redemption under sub clause 2(j) of the Memorandum. The plaintiffs expressed shock at the defendants' attempt to charge interest up to December 31, 1981. The plaintiffs referred to an earlier transaction regarding the redemption of the Sim Lim Tower Properties between the parties when in similar circumstances the defendants had waived their rights under a clause similar to sub-clause 2(j) of the Memorandum and had not charged interest for the full period. The plaintiffs urged the defendants to adopt a similar course.

The plaintiffs informed the defendants that they had sold the mortgaged properties and that completion under that sale was scheduled to take place on February 18, 1981. They therefore required the defendants to complete the redemption on that date. By a letter dated February 13, 1981 the plaintiffs stated that they would pay the defendant the sum of $231,645.19 on February 18, 1981 "strictly under protest and objection to redeem" the said properties. In their reply dated February 18, 1981, the defendants stated that they did not agree to the waiver of the interest for the full period of 15 months or to any reduction thereof. They insisted on their strict rights under sub-clause 2(j) of the Memorandum. They also contended that their concession in not charging full interest in respect of the redemption of the Sim Lim Tower Properties was not meant to be a precedent. On the following day the plaintiffs paid the entire sum of $231,645.19 to the defendants and again expressing the payment to be "strictly under protest and objection". The mortgage was redeemed on February 20, 1981. The plaintiffs then commenced the present proceedings to seek, *inter alia*, a declaration that the defendants were not entitled to charge as interest the sum of $22,660.43 in addition to the repayment of the principal